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**SOUTHERN DISTRICT OF NEW YORK
UNITED STATES DISTRICT COURT**

ATTACHMENT 1

HAROLD TOUSSAINT

V.

CIVIL ACTION

NO. _____

JR Restaurants

701 7th Avenue, New York, NY 10036

COMPLAINT

Parties

1. The plaintiff is a resident of Brooklyn, Kings County, New York and a citizen of the United States.
2. The defendant John Fraser is owner of JF Restaurants located in New York, NY and a citizen of United States.
3. The defendant Ben _____ is a human resources manager of JR Restaurants located in New York, New York and a citizen of the United States. (No last name mentioned in all correspondences)
4. The defendant Mariana _____ is a human resources manager of JR Restaurants located in New York, New York and a citizen of the United States. (No last name mentioned in all correspondences)
5. The defendant Amy Racine is a human beverage director of JR Restaurants located in New York, New York and a citizen of the United States.

6. This Court has jurisdiction over the matter pursuant to **28 U.S. Code § 1332**

Facts

7. On October 9, 2018, plaintiff Harold Toussaint received an email from Ben _____ (no last name in the email), human resources manager for John Fraser Restaurants (hereafter, **JR Restaurants**) acknowledging Toussaint's online application for a server position advertised on Craigslist and several other job seeker sites for work at JR Restaurants soon to open fine dining restaurant called **701 West**, located in the Edition Hotel in Manhattan.

6. Plaintiff Harold Toussaint's first interview was held on **October 12, 2018**, and a second interview with several members of JR restaurants was held on **October 16, 2018**, followed by a stream of emails beginning October 7, 2018, with my application for a Dining Room Captain position and ending **December 19, 2018** regarding an application for a Sommelier position—all of which I, Harold Toussaint am eminently qualified (see Bio attached).

7. John Fraser had four additional restaurants—all with job vacancies at the time. Also, for an entire year after the denial letter, John Fraser Restaurants continually advertised the very job(s) for which I am eminently qualified. (Refer to Exhibits, attached.)

8. **What is highly egregious, as well as illegal**, is that my resume along with my calm demeanor and professional comportment, demonstrated a remarkably a good quality that placed my resume eminently above others.

9. *Adding insult to injury, I had been interviewed six times, and am aware of some job applicants being hired after the very first interview, and others on the spot—for the same position for which I applied.*

10. Because they were all White, and half my age, and hired on the spot—this constitutes bias and disparate treatment.
11. There is no justification whatsoever for not hiring a job candidate who, at the time of job application, had 53 years of experience working in fine dining restaurants, coast-to-coast, and internationally; having started at the bottom as busser and cook, working his way up to every position in the restaurant industry, including: *server, dining room captain, maître d', banquet maître d', dining room manager, sommelier, master sommelier, multiple times sommelier competition winner (nationally and internationally); line cook, sous-chef in a French Restaurant, chef-consultant in a New Orleans Creole restaurant; restaurant instructor (developing curriculum and issuing certificates) at culinary schools nation-wide, as well a wine principle wine lecturer at a prestigious university; wine consultant, founder & director of a Wine School.*
12. I, Harold Toussaint, am an African American (Creole from New Orleans, Louisiana) who at the time of my job application, attained the age of 68 with 50 years of industry-wide experience.
13. **Facts** stated above are supported by a condensed list of emails attached in **Section 1, Background & Exhibits A thru I.**
14. The plaintiff is seeking relief for lost wages and loss of good health: to be made whole physical, mental, and emotional.
15. WHEREFORE, the Plaintiff demands judgment against the defendants for damages and such other relief as this Court deems just.

16. The plaintiff demands by a trial by jury.

Name: Harold Toussaint

Signature 

Date December 15, 2022

Address: 6 ½ Europe Street, apt 3

Providence, Rhode Island, 02903

APPLICABLE US CODES

- 29 U.S.C. § 621 to 29 U.S.C. § 634 ageism (ADA)
- **Title 42** - The Public Health and Welfare
Chapter 126 - Equal Opportunity for Individuals With Disabilities
Sec. 12102 - Definition of disability
- **42 U.S. Code § 2000e-2** - Unlawful employment practices

2011 US Code

Title 42 - The Public Health and Welfare
Chapter 21 - CIVIL RIGHTS (§§ 1981 - 2000h-6)
Subchapter I - GENERALLY (§§ 1981 - 1996b)
Section 1981 - Equal rights under the law

Regarding Harold Toussaint's Job Application and Numerous Interviews with John Fraser Restaurants, located in New York, NY

LEGAL BASIS

Regarding a racial discriminations case against John Fraser Restaurant Group, under 42 U.S.C. § 1981, Section 1 of the 1866 Civil Rights Act.

The statute establishes that certain rights are to be guaranteed to all citizens of the United States, and these rights are to be protected against impairment by nongovernment and state discrimination. More specifically, Section 1981(a) guarantees the following rights: "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Section 1981 protection against discrimination in actions taken by the federal government, but also by the state governments and private individuals. For example, in Jones v. Alfred H. Mayer Co., the U.S. Supreme Court confirmed that Section 1981 bars all racial discrimination, private as well as public, in sale or rental or property. Also, the U.S. Supreme Court, in CBOCS West, Inc. v. Humphries ruled that Section 1981 extend to retaliation claim.

<https://www.mondag.com/unitedstates/employee-rights-labour-relations/28433/supreme-court-rules-four-year-statute-of-limitations-applies-to-all-claims-of-race-discrimination-under-section-1981>.

BACKGROUND & EXHIBITS

Section 1 below documents in chronological order **John Fraser Restaurants** (*hereafter JF Restaurants*) **refusal to hire Harold Toussaint, a Black American**, 68 years of age with 53 years of industry-wide, national, and international experience at the time of job application with FRG—**after a plethora of email correspondences and 6 in-person interviews** over a 2 ½ months period. White candidate were hired after the 1st interview.

Harold Toussaint's professional titles include *sommelier-lecturer-consultant*, *sous-chef*, and *instructor in dining room crafts & related areas*. Toussaint's also in the first American to earn the international recognized title of "*gold medallion master sommelier in wines and spirits of France*," an honor awarded Toussaint as a result of winning the San Francisco Region Sommelier Competition *thrice successively*; dominating the largest sommelier region, comprising the most master sommeliers in the USA. A press kit will be submitted at the appropriate time for verification.

Toussaint has a witness who informed him of being hired after the very first interview. That witness also spoke of observing ageism and racism in hiring and promoting.

BRIEF HISTORICAL OVERVIEW OF THE COMPLAINT

October 9, 2018, I received an email from Ben, hiring manager for John Fraser Restaurants human resources department, acknowledging my online application for work at the soon to open fine-dining restaurant called **701West**, located in the Edition Hotel in Times Square in Manhattan, NYC.

My job application began a series of interviews beginning **October 12, 2018**, and culminating **December 16, 2018** in a letter from Marianne of John Fraser's human resources department informing me I would not be hired in any capacity whatsoever by a restaurant group which had hundreds of job opening for which I qualify.

Moreover, John Fraser Group had four additional restaurants—all with job vacancies at the time. Also, for an entire year after the denial letter, John Fraser Restaurants continually advertised the very job(s) for which I am eminently qualified. (Refer to Exhibits, attached.)

What is highly egregious, as well as illegal, is that my resume along with my calm demeanor and professional comportment, demonstrated a remarkably a good quality that placed my resume eminently above others.

Adding insult to injury, I had been interviewed six times, and am aware of some job applicants being hired after the very first interview, and others on the spot—for the same position for which I applied. (They were all White, and half my age.)

In other words, there is no justification whatsoever for not hiring a job candidate who, at the time of job application, had 53 years of experience working in fine dining restaurants, coast-to-coast, and internationally; having started at the bottom as busser and cook, working his way up to every position in the restaurant industry, including: *server, dining room captain, maître d', banquet maître d', dining room manager, sommelier, master sommelier, multiple times sommelier competition winner (nationally and internationally); line cook, sous-chef in a French Restaurant, chef-consultant in a New Orleans Creole restaurant; restaurant instructor (developing curriculum and issuing certificates) at culinary schools nation-wide, as well a wine principle wine lecturer at a prestigious university; wine consultant, founder & director of a Wine School.*

I, Harold Toussaint, am an African American (Creole from New Orleans, Louisiana) who at the time of my job application, attained the age of 68 with 50 years of industry-wide experience.

SECTION 1, EXHIBITS

Chronology of Email Streams Concerning Job Application Denial

A. Friday, October 12, 2018 at 03:17:41 PM EDT, Human Resources
<hr@jfresteraurants.com> wrote:

Hello Harold,

My name is Ben and I am emailing on behalf of the Human Resources team at John Fraser Restaurants. We would like to schedule you to meet another member of our management team!

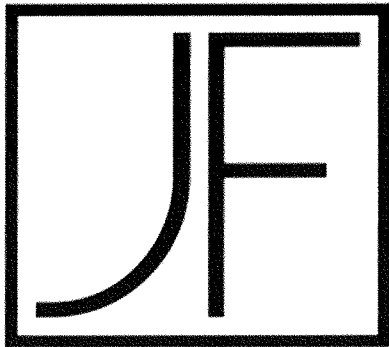
Please let me know if you are available to meet with us during one of the time slots below. If none of these dates/times work for you, please let me know your availability.

Tuesday, October 16th: 10:20 AM, 10:40 AM, 11 AM, 11:20 AM

Thursday, October 18th: 10 AM, 10:20 AM, 10:40 AM, 11 AM, 11:20 AM or 11:40 AM

Friday, October 19th: 10 AM, 10:20 AM, 10:40 AM, 11 AM, 11:20 AM or 11:40 AM

We look forward to hearing from you!



RESTAURANTS

Human Resources

Human Resources Department | John Fraser
Restaurants

P: 212-261-5301

E: HR@JFRestaurants.com

www.jfresteraurants.com

-----Original Message-----

B. From: Human Resources <hr@jfresteraurants.com>
To: Harold Toussaint <h_toussaint@aol.com>
Sent: Fri, Oct 12, 2018 3:17 pm
Subject: Final Interview- John fraser Restaurants

Hello Harold,

My name is Ben and I am emailing on behalf of the Human Resources team at John Fraser Restaurants. We would like to schedule you to meet another member of our management team!

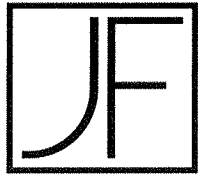
Please let me know if you are available to meet with us during one of the time slots below. If none of these dates/times work for you, please let me know your availability.

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Friday, October 19th: 10 AM, 10:20 AM, 10:40 AM, 11 AM, 11:20 AM or 11:40 AM

We look forward to hearing from you!



RESTAURANTS

Human Resources

Human Resources Department | John Fraser Restaurants

P: 212-261-5301

E: HR@JFRestaurants.com

www.jfresteraurants.com

C From: JFR Hiring <hiring@jfresteraurants.com>
Sent: **Thu, Nov 8, 2018 10:06 pm**
Subject: Timeline Update 11.8.18

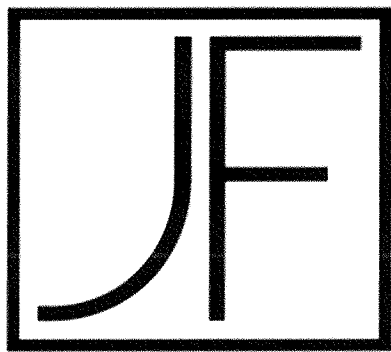
Good evening everyone,

Our preliminary schedule for training is as follows, and is subject to change. We will begin training early - mid December. Having said that, since we will be closed for Thanksgiving we hope you can use that time off to spend with friends and family before we gear up for training!

We hope you have a wonderful holiday!

If you have any questions, please let me know.

Best,
Mariana



RESTAURANTS

Human Resources

Human Resources Department | John Fraser
Restaurants

P: 212-261-5301

E: Hiring@JFRestaurants.com

www.jfresteraurants.com

REPLY From Harold Toussaint, h_toussaint@aol.com

Hello Mariana,

Thank you for the update. I am delighted by the opportunity to join your new restaurant opening team.

Best regards,

Harold
917-957-4878

D, JFR Hiring <hiring@jfresteraurants.com>

To: H_TOUSSAINT@aol.com

Sun, Dec 16, 2018 at 3:16 PM

Hello Harold,

Thank you for your continued interest in John Fraser Restaurants. We appreciate your flexibility in coming to meet with different members of our team and for the time you have invested in the interview process with us.

This email is to inform you that our team did not select your application for further consideration. We won't be able to move you forward in our hiring process, we will keep your resume on file.

We wish you the best in your job search and future professional endeavors.

Sincerely,
Mariana



RESTAURANTS

Human Resources

Human Resources Department | John Fraser Restaurants

P: 212-261-5301

E: Hiring@JFRestaurants.com

www.jfresteraurants.com

E. On Fri, Dec 7, 2018 at 4:38 PM Harold Toussaint <h_toussaint@aol.com> wrote:

Hello Mariana,

Regarding your email message this afternoon which says "This email is to inform you that we are moving in a different direction with our dining concept."

While searching craigslist to find out more about your opening date, I learned you are currently seeking sommeliers and a beverage director. I was tempted to apply for a sommelier position but then thought that since I've already completed the hiring process, I should continue with the position I originally applied. However, now that you've changed the concept to include sommeliers and beverage directors (and JF Restaurants is opening a steakhouse), I'd like you change my job application from that of Lead Waiter to **Sommelier** or **Wine Director**.

My resume on file I can update to include more than a decade of sommelier experience or I can resend it.

Currently I am consulting to a Country Club in Pennsylvania, developing their wine list as well as its cost-analysis while awaiting your restaurant opening and training call. My Wine and Service Director experience includes:

- Maitre d'Hotel, Maison Robert, Boston, MA
- Sous-Chef, Le Languedoc, Nantucket MA (under its original owner, Chef Leon Marti)
- Maitre d'Hotel, La Coquille, Dennis, MA
- Master Instructor & Consultant, San Francisco Hotel-Restaurant Labor Management Education Fund
- Banquet Food Servers Instruction and A la Carte Curriculum Development. SFHRLF
- Food & Beverages Service Instructor & Consultant, The San Francisco Club Institute
- Sommelier, The Carnelian Room, San Francisco, CA (Wine Spectator Grand Award Winner)
- Sommelier, Rubicon, San Francisco, CA (Wine Spectator Grand Award Winner)
- Sommelier, Stanford Court Hotel, San Francisco, CA (Wine Spectator Grand Award Winner)
- Sommelier, Amelio's Restaurant, San Francisco, CA (Wine Spectator Grand Award Winner)
- Head Sommelier, The Ritz-Carlton, Boston, MA
- Principal Wine Lecturer, Boston University Metropolitan Collage Seminars In The Culinary Arts
- Sommelier-Lecturer-Consultant, Food and Wines From France, NYC and Paris
- Wine Director, Plaza III Steakhouse, Boston, MA
- Beverage Director, Marche Boston
- Sommelier-Consultant, Lumiere Restaurant, West Newton, MA
- Sommelier, Nick & Toni's, East Hampton, NY
- Wine Director-Consultant-Instructor, La Gamelle French Restaurant, NYC
- Sommelier, Bowery Meat Company, NYC

I've won sommelier blind tasting contest in Paris, London, Boston, and San Francisco, as well as hold certificates in Culinary Arts, OSHA, and NYDOH Food Protection.

My websites: www.thewineschool.us and www.thewineschool.net are temporarily down due to an overbilling issue which should be resolved by Monday. Then you can also view my bio and work experience online. Please feel free to contact me with questions. I look forward from hearing from you regarding how my industrywide, cross-trained experience can be to our mutual benefit

Yours truly,

Harold Toussaint,

Founder and director, The Wine School (2500 person client database)

First Place Winner, First Sommelier Competition in America

Thrice Best Sommelier of San Francisco Region

Twice National Finalist, Grand Prix du Sopexa Best Sommelier in America Competition

America's First Silver Medallion Master Sommelier in Wines and Spirits of France

America's First Gold Medallion Master Sommelier In Wines and Spirits of France

917-957-4878

--Original Message-----

F. From: JFR Hiring <hiring@jfresteraurants.com>
To: h_toussaint <h_toussaint@aol.com>
Sent: **Sat, Dec 8, 2018 6:36 pm**
Subject: Re: JF Restaurants Thanks You

Hello Harold,

Thank you for your response and continued interest. To clarify, we are not opening a steakhouse and do not have a Beverage or Wine Director position available however we are looking for Sommeliers who will be serving food as well. We would like to invite you back to meet with our Wine Director on **Wednesday, December 13th between 1 PM - 230 PM.** Please let us know what time works best for you. The meeting will take place at the hotel.

Best,
Mariana



RESTAURANTS

Human Resources

Human Resources Department | John Fraser Restaurants

P: 212-261-5301

E: Hiring@JFRestaurants.com

www.jfresteraurants.com

G. Sunday, December 9, 2018 at 11:47:22 AM EST, Harold Toussaint <h_toussaint@aol.com> wrote:

Hello Marina,

Thank you so much for your prompt reply.

I'd be delighted to meet with your wine director on **Wednesday, December 13th at 1:00 pm** if that time slot is best. I am a sommelier who describes himself as *someone who works in a restaurant* (meaning serving food and doing all that is required for the smooth operation of a restaurant). At the time I won my first three sommelier competition, I was working as a dining room captain /lead waiter who also happens to recommend and serve wines. I don't overidentify myself with the title "sommelier" because wine knowledge is just *one* of many in a restaurant's tool box.

Please confirm the date and time. And thank you again!

Best regards,

Harold
917-957-4878

G, Harold Toussaint <h_toussaint@aol.com>

Wed, Dec 12, 2018 at 4:43 PM

Hello Human Resources Managers,

Today is the two-month anniversary of my original job application with JR Restaurants. Now having completed my sixth interview I'd greatly appreciate knowing when I would be hired and what is the training period start date.

Best regards,

Harold

Harold Toussaint,

Founder and director, The Wine School (2500 person client database)

First Place Winner, First Sommelier Competition in America

Thrice Best Sommelier of San Francisco Region

Twice National Finalist, Grand Prix du Sopexa Best Sommelier in America Competition

America's First Silver Medallion Master Sommelier in Wines and Spirits of France

America's First Gold Medallion Master Sommelier In Wines and Spirits of France

917-957-4878

H. JFR Hiring <hiring@jfresteraurants.com>

To: H_TOUSSAINT@aol.com

Sun, Dec 16, 2018 at 3:16 PM

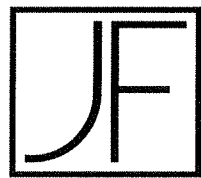
Hello Harold,

Thank you for your continued interest in John Fraser Restaurants. We appreciate your flexibility in coming to meet with different members of our team and for the time you have invested in the interview process with us.

This email is to inform you that our team did not select your application for further consideration. Although we won't be able to move you forward in our hiring process, we will keep your resume on file.

We wish you the best in your job search and future professional endeavors.

Sincerely,
Mariana



RESTAURANTS

Human Resources

Human Resources Department | John Fraser Restaurants

P: 212-261-5301

E: Hiring@JFRestaurants.com

www.jfrestaurants.com

I. Mon, Dec 17, 2018 at 7:30 PM Harold Toussaint <h_toussaint@aol.com> wrote:

Hello Mariana,

Re: your email of yesterday denying me job. Could you please be more specific?

If there is anything or anyone, interfering my prospective employment, placing a prohibition on my rights of citizenship to feed clothe and shelter my family and inclusion this Great America, I implore of you alert me to anything which may have contributed to disqualifying my being offered just one among the plethora of restaurant positions you have advertised on a daily basis over a two and a half month period in which I've demonstrated nothing less than graciousness, gratitude, *patience, perseverance and loyalty* during the six interviews and 40 email correspondences throughout your protracted pre-opening process.

My resume bears witness to my industry-wide experience in both fine-dining and high-volume restaurants, working simultaneously as dining room captain *and* sommelier--locally, nationally; consulting and competing internationally. My resume and press kit also demonstrates I have excelled in virtually every position that you have advertised. Therefore, I am offering Chef John Fraser the opportunity to personally *inter-view* me in order that may judge me "on the content of my character," as Rev. Dr. Martin Luther King states it.

Furthermore, I've won so many sommelier competitions (competing alongside, WSET master of wine candidates, London Guild Court master sommeliers, American Court of master sommeliers, etc.), all the while still employed as a dining room captain, that in 1986, I was classified "beyond competition" in the US (therefore, I went to Paris, France and won a sommelier blind tasting competition within a few days of having just entered that country)...

This is my Apologia attempting to convey to you how *baffling* it is that a company such as yours which has 50 - 100 FOH job openings (not including BOH) cannot find a place for me--especially after 2 1/2 months of interviews--yet hires others with less experience and qualifications on-the-spot! This matter truly requires the urgent attention of the owner(s) as well as a more detailed explanation to the job applicant, in order that the conclusion of the matter is not left to Imagination or Hearsay.

During my interview with your beverage director on Wednesday the 12th, she showed no interest whatsoever in viewing my resume, was unaware of the fact I'd already submitted one, and unprepared for the scheduled interview. It was as if no one had ever told her I was scheduled.

When I asked your beverage manager for a tour of the restaurant, she declined. I then asked her when is the start date for training, she also declined to answer that question as well. When she (John Fraser's representative) asked me whether I had any questions for her, I replied "The sommelier candidate sitting at the table just in front of me was hired on the spot. He has already been given a tour of the restaurant and requested another walkthrough of the facilities and it was grated. He was also told that training begins just after New Year's Day... This is my sixth interview over a two months

job application process. When do I start?" She then denied that the person across the table from me was hired or ever given a tour of the facilities.

The beverage manager then asked me "Have you ever worked at a Michelin starred restaurant? I replied, I worked many years and Maitre Jacques and Maison Robert in Boston where the chefs came from two and three starred restaurants of France. The restaurants I worked in Boston and San Francisco were rated among the top ten in their respective cities. Michelin had only come to the states in the recent years. I competed and won among sommeliers who worked 3 Michelin starred restaurants.

Gilbert Lecoze, original chef of Le Bernardin (** Michelin) offered me the job as his sommelier for the opening of Le Bernardin in NYC in 1985. (He commissioned me to serve as his "sommelier honoraire" at his press debut at Sterling Winery, Calistoga 1985, stating that he chose me after dining at Stanford Court Hotel and observing that I am maître d'hôtel who also happens to be a sommelier...It has now occurred to me that I am self-interviewing in this letter because I wasn't properly interviewed...I refused relocate to NYC to join Chef Lecoze because I was satisfied with life in the Bay Area. *Your bev. manager then replied "We are only hiring people with NYC Michelin starred restaurant experience!" I then asked her "Are you a member of the Court of Master Sommeliers." She then hung her head down and replied, "No." I then said to myself, See this is how she made me to feel by searching for a reason NOT to hire me."*

Please pass this reply to your letter of non-hiring after six interviews and 40 email correspondences to Mr. Fraser.

Dear Mariana, the tone of your letter, although in no ways hostile, demonstrated no interest whosoever in hiring me. I truly believe that you personally would have liked to hire me. I hold no ill-will against you. However, I do ever so clearly sense a "hidden hand" which must be exposed if I am to regain my career and the resources to feed, clothe, and shelter my family.

I believe Mr. Fraser is unaware, and the process may not meet his approval? Please be mindful that when you have the opportunity to not destroy a family, you must take *affirmative* action.

Sincerely.

Harold Toussaint, 917-957-4878

Founder and director, The Wine School (2500 person client database), since 1987

First Place Winner, First Sommelier Competition in America, 1980, held at The Vintner's Club, San Francisco (civf, usdf, sopexa)

Thrice Best Sommelier of San Francisco Region, 1980, 1984, 1986 (civf, usdf, sopexa) (non held bet 1980 and 1985)

Twice National Finalist, Grand Prix du Sopexa Best, Sommelier in America Competition, held at Waldorf-Astoria Grand Ballroom 1984, and again in 1985 (civf, usdf, sopexa)

First Place Winner, Sommelier Blind Tasting, Gourmets Var A Vins, 15 Place Dauphine, Paris, 1986 (rvf) America's First Silver Medallion Master Sommelier in Wines and Spirits of France, 1984

America's First Gold Medallion Master Sommelier In Wines and Spirits of France, 1985

Accredited Instructor in Dining Room Crafts & Related Areas, San Francisco Hotel-Restaurant Labor Management Fund, 1981-1984

Served a Sommelier at Three Wine Spectator Grand Award Wine Cellars

Note: Harold Toussaint received no reply to his appeal for assistance.